

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT HEIZELMAN,
BOP #20068-298,

Plaintiff,

GARCIA, et al.,

Defendants.

Civil No. 10-1896 LAB (POR)

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO PAY
FILING FEES PURSUANT TO
28 U.S.C. § 1914(a) AND FOR
FAILING TO MOVE
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Plaintiff, currently incarcerated at Metropolitan Correctional Center, and proceeding pro se, has filed a civil rights complaint.

I. FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS

Any party instituting a civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, Plaintiff has not prepaid the \$350 filing fee required to commence a civil action; nor has he submitted a Motion to Proceed IFP. Therefore, the case must be dismissed pursuant to 28 U.S.C. § 1914(a).

1 **II. Conclusion and Order**

2 For the reasons set forth above, the Court hereby:

3 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350

4 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

5 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:

6 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed

7 IFP which includes a certified copy of his trust account statement for the 6-month period

8 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).

9 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with the

10 Court's form "Motion and Declaration in Support of Motion to Proceed *In Forma Pauperis*."

11 If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the enclosed

12 Motion to Proceed IFP within that time, this action shall remain dismissed without prejudice and

13 without further Order of the Court.

14 **IT IS SO ORDERED.**

16 DATED: September 16, 2010

17 Larry A. Burns

18 **HONORABLE LARRY ALAN BURNS**
United States District Judge

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